

PT 07-15

Tax Type: Property Tax

Issue: Government Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

Pleasantview Fire Protection District
Applicant

v.

**Department of Revenue
State of Illinois**

06 PT 0062
(05-16-1419)
PIN: 18-15-302-027
18-15-302-028
18-15-302-029
18-15-302-030
18-15-302-031
18-15-302-032

RECOMMENDATION FOR DISPOSITION

Appearances: Ronald J. Broida of Broida and Tullis, Ltd. for the Pleasantview Fire Protection District; George Foster, Special Assistant Attorney General, for the Illinois Department of Revenue

Synopsis:

This matter came on for hearing pursuant to the protest and request for hearing filed by the Pleasantview Fire Protection District (hereinafter “PFD” or the “Applicant”) following the Illinois Department of Revenue’s (hereinafter the “Department”) Denial of Non-homestead Property Tax Exemption (hereinafter the “Denial”) for the year 2005 (hereinafter the “tax year”) for the referenced property (hereinafter, collectively, the “property” or the “subject property”). The denial was based upon the Department’s determination that the property was not in exempt ownership for the tax year. A hearing was held in this matter whereat oral and documentary evidence was presented. Following an examination of the complete record in this cause, it is recommended that the matter be

decided in favor of the Department, and in support thereof, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT:

1. On July 6, 2006, the Department issued a Denial of Non-homestead Property Tax Exemption to PFD for the tax year 2005 based upon the Department's determination that the subject property was not in exempt ownership during that time. Department Ex. No. 1 (Denial of Non-homestead Property Tax Exemption)
2. The applicant, a fire protection district, is a municipal corporation pursuant to the Illinois Fire Protection District Act, 70 ILCS 705/0.01 *et seq.* Applicant Ex. No. 3, ¶ 1 (Complaint For Condemnation, #05 L 050415);
3. On April 27, 2005, PFD filed a Complaint for Condemnation in the Circuit Court of Cook County (hereinafter the "Complaint") against, among others, the title holders of the subject property for the purpose of determining, *inter alia*, the compensation to be paid by the applicant for fee simple title to the property. Applicant Ex. No. 3
4. The applicant wanted the property for use as its fire station. Tr. p. 14 (testimony of Dan Hermes, Fire Chief, Pleasantview Fire Protection District) (hereinafter "Hermes"). At the time of the hearing, the fire station was being built. Tr. p. 19 (Hermes)
5. On November 8, 2005, the applicant and the title holders of the property entered into a Real Estate Contract and Settlement Agreement (hereinafter

the “contract”). Applicant Ex. 9 (Real Estate Contract and Settlement Agreement)

6. One of the terms of the contract was that the parties would complete the transfer of the sale of the property on January 6, 2006 for an amount certain. Id. at ¶¶ 1, 4
7. A term of the contract was that the applicant assumed liability for the property’s general taxes for the period after April 27, 2005. Id. at ¶ 2
8. On January 6, 2006, the title holders of the property transferred title to the property to the PFD by way of a trustee’s deed. Applicant Ex. No. 11 (Trustee’s Deed)
9. On January 24, 2006, parties to the condemnation court proceedings filed a Stipulation To Dismiss wherein they “stipulated and agreed” that the complaint “be dismissed with prejudice and without costs.” Applicant Ex. No. 10 (Stipulation To Dismiss)
10. On January 24, 2006, an order was entered in the condemnation court proceedings pursuant to the Stipulation To Dismiss and the matter was “dismissed with prejudice and without costs.” Applicant Ex. No. 12 (Order To Dismiss By Stipulation)

Conclusions of Law:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its authority granted under the Constitutional, the General Assembly enacted specific exemptions to the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.* (hereinafter referred to as the “Code”). PFD claims exemption from the imposition of real estate taxes for the tax year 2005 under Code sections 200/15-70 and 200/15-75. Those provisions provide, in relevant part:

§ 15-70 Fire protection purposes. All property used exclusively for fire protection purposes and belonging to any city, village, or incorporated town is exempt.

All property of a corporation or an association which maintains a fire patrol and salvage corps for the public benefit is exempt if the property is:

- (a) used exclusively for providing suitable rooms, housing and storage facilities for fire and rescue equipment, and
- (b) necessary for the accommodation of a fire patrol and salvage corps, or otherwise used exclusively for the purpose of the fire patrol and salvage corps, and
- (c) used to provide a service that is rendered indiscriminately and without charge to the public, except reasonable charges for the use of fire covers after the lapse of 10 days following the occurrence of loss or damage.

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§ 15-75. Municipal corporations. All market houses, public squares and other public grounds owned by a municipal corporation and used exclusively for public purposes are exempt.

Both of these statutory provisions mandate, principally, that the property be owned by an exempt entity and used in an exempt manner. The Department’s denial is based only on the exempt ownership requirement, therefore, if it is concluded that the applicant was the legal title holder in 2005, its use of the property is not at issue in this matter.

More specifically, the Department argues that the PFD did not own the property until January 6, 2006, the date of the trustee’s deed. That date was negotiated by the title holders and PFD and was a term in their contract. Tr. pp. 21-22 (Hermes). The applicant’s position is that the law establishes that title to property taken pursuant to a

condemnation action is effective as of the filing date of the court proceedings, therefore, applicant holds title to the subject property from April 27, 2005.

Applicant's argument is based on the premise that the PFD and the property owners were not able to reach an agreement about the purchase of the property, and, therefore, it was necessary for the PFD to file a condemnation action. The condemnation suit was filed pursuant to the Eminent Domain article of the Illinois Code of Civil Procedure, 735 **ILCS** 5/7-101 *et seq.* (hereinafter the "Act") That statutory provision provides, in pertinent part that:

§ 7-101. Compensation-Jury. Private property shall not be taken or damaged for public use without just compensation, and in all cases in which compensation is not made by the state in its corporate capacity, or a political subdivision of the state, or municipality in its respective corporate capacity, such compensation shall be ascertained by a jury, as hereinafter prescribed. Where compensation is so made by the state, a political subdivision of the state, or municipality, any party upon application may have a trial by jury to ascertain the just compensation to be paid...In the event no party in the condemnation action demands a trial by jury as provided for by this Section, then the trial shall be before the court without a jury.
735 **ILCS** 5/7-101

Further, the Act states, in pertinent part:

§ 7-123. Judgments. (a) If the plaintiff is not in possession pursuant to an order entered upon the provisions of Section 7-105 of this Act the court, upon such report, or upon the court's ascertainment and finding of the just compensation where there was no jury, shall proceed to adjudge and make such order as to right and justice shall pertain, ordering that the plaintiff shall enter upon such property and the use of the same upon payment of full compensation as ascertained, within a reasonable time to be fixed by the court, and such order, with evidence of such payment, shall constitute complete justification of the taking of such property. Thereupon, the court in the same eminent domain proceeding in which such orders have been made, shall have exclusive authority to hear and determine all rights in and to such just compensation and shall make findings as to the rights of the

parties therein... . If in such case the plaintiff dismisses the complaint before the entry of the order by the court first mentioned in this subsection (a) or fails to make payment of full compensation within the time named in such order, or if the final judgment is that the plaintiff cannot acquire the property by condemnation, the court shall, upon the application of the defendants or any of them, enter such order in such action for the payment by the plaintiff of all costs, expenses and reasonable attorney fees of such defendant or defendants paid or incurred by such defendant or defendants in defense of the complaint, as upon the hearing of such application shall be right and just, and also for the payment of the taxable costs.

735 ILCS 5/7-123

Clearly, then, the Act specifically provides for the entry of an order by a court wherein, *inter alia*, the plaintiff-condemnor is adjudicated to have the right to acquire the property for an amount certain. It also acknowledges that a plaintiff may dismiss its complaint before the court enters an order setting forth the rights of the parties. In the event that the governmental entity takes title to the property pursuant to a court's order, the effective date that it takes title is the date of the filing of the condemnation suit. Public Building Commission of Chicago v. Continental Illinois National Bank and Trust Company of Chicago, 30 Ill. 2d 115 (1963); County Treasurer and Ex Officio County Collector of Lake County, 13 Ill. App. 3d 927, 930 (2nd Dist. 1973) ("where there is a taking of title under eminent domain, the date of the filing of the condemnation petition is intended to be the termination date for the liability for taxes on the land, and, therefore, general real-estate taxes for the year in which the petition is filed are to be prorated as of the date of the filing of the petition."). Therefore, at best, the applicant would only be entitled to an exemption for that part of the tax year from April 27, 2005.

In interpreting these statutory provisions, Illinois courts have accepted the fact that once a condemnation suit has been filed the parties to the action may well come to

agreement as to all or some of necessary terms to be decided in the lawsuit. City of Crystal Lake v. LaSalle National Bank, 121 Ill. App. 3d 346, 352 (2nd Dist. 1984) (“The authorities reveal that as a common practice stipulations and agreements are entered into by the parties, with the agreement being incorporated into the final condemnation judgment. (Parker v. Board of Trustees of Southern Illinois University, 74 Ill. App. 2d 467, 470) Such stipulations are generally confined to an agreement as to the compensation to be paid, but a variety of other matters may also be agreed upon and adopted in the consent decree.” (further citations omitted) (emphasis added)).

It is this point that is the issue in this case. The Department argues that ownership in the property vested in the applicant through a trustee’s deed that was not made part of a judgment in the condemnation lawsuit. Thus, the effect of the voluntary dismissal of the lawsuit is the same as if there never was a condemnation suit. Tr. p. 31 (Department closing argument).

Conversely, the applicant argues that the applicant wished to have all of the lessees removed from the property, which it determined was a “fire hazard” (Tr. p. 13 (Hermes)), in the most expeditious manner so that the building could be torn down. Tr. pp. 33-34 (applicant closing argument). According to the applicant, it was less time-consuming entering into a contract and executing a trustee’s deed prior to having a judgment entered in the condemnation lawsuit that would have incorporated the contracted terms. Tr. pp. 20-22 (Hermes), 33 (applicant closing argument).

I am unable to agree with the applicant. The control and exercise of eminent domain is in the legislature (Chicago & N.W. RY. Co. v. Chicago Mechanics’ Institute, 239 Ill. 197 (1909), and the statutes granting rights of eminent domain must be strictly

construed. Id. The statute specifically mandates that the public body seeking to condemn private property name as parties to the lawsuit “all persons interested therein as owners or otherwise as appearing of record, if known, or if not known stating that fact... .” 735 ILCS 5/7-102. “If leased property is taken or damaged, the lessee is entitled to recover his proportionate share, and the court should apportion the award between the lessor and the lessee.” City of Chicago v. Shane, 46 Ill App. 2d 33, 39 (1st Dist. 1964). “Generally it is held that the lessee is entitled to the reasonable value of the unexpired portion of the lease less the rent which would have been due to the lessor.” Id. In this matter, the applicant did name a long list of persons who it averred “owned or otherwise are interested” in the property. Applicant Exs. No. 1 (Summons), 2 (First Duplicate Original Summons), 3 ¶ 4 (Complaint For Condemnation).

The Act further provides that the court in the condemnation proceeding “shall have exclusive authority to hear and determine all rights in and to such just compensation and shall make findings as to the rights of the parties therein... .” (emphasis added) 735 ILCS 5/7-123. In addition, “[A]ppeals may be taken from any findings by the court as to the rights of the parties in and to such compensation paid...as in other civil cases.” Id. It is noted that, as part of their negotiations, the applicant and the title holders agreed that there would not be any lessees remaining in the building on the January 6, 2006 closing date-the date when the applicant took possession. Tr. pp. 21-22. There is nothing in the order of dismissal entered in the condemnation suit that addresses specifically, or by reference, the interests of any lessees.

The applicant complains that the Department’s denial of its exemption request is an example of “where a form should not control the substance and the intent of what took

place.” Tr. p. 33 (applicant closing statement). This position ignores the import and purpose of the condemnation legal proceedings, that is, that the rights of all of the parties in interest be protected and adjudicated. In this case, by the very terms of the order of dismissal, no rights were addressed, let alone determined, by the court that is the exclusive venue established by the legislature to grant those rights in condemnation actions.

While it is true that parties to a condemnation lawsuit can stipulate and agree to some or all of the issues of the matter, the courts accommodate the parties in such circumstance by allowing the stipulation or agreement to be incorporated into the condemnation judgment order. Neither the applicant, nor the Department, nor I dispute this legal point. The issue herein, however, is whether a condemnation lawsuit, dismissed by order of dismissal with prejudice and without addressing in any way rights of the parties, has the same legal effect as a judgment in the condemnation lawsuit that incorporates the terms of the stipulation or agreement wherein those rights are set forth. Whereas the applicant implies there is no legal distinction, its position is not supported by either statute or caselaw.

The Act recognizes that a condemnation lawsuit may be dismissed prior to an adjudication (735 **ILCS** 5/7-123) with the result being that the title to property is not transferred by condemnation. In the case of Mattion v. Trustees of Schools of Township 41 Range 12, 2 Ill. App. 3d 1035 (1st Dist. 1971), the court was presented by the following facts, to wit: the plaintiff, a private party, owned acreage, part of which the school district wanted to acquire for school purposes. The parties could not come to an agreement, so the school district filed a suit in condemnation. During the pendency of

the suit the parties reached an agreement and title to the acreage at issue was transferred from the plaintiff to the school district by way of a warranty deed. More than five years later, the school trustees authorized the sale of the land, at which time the plaintiffs filed its complaint to prevent the sale, asserting, *inter alia*, that the warranty deed should be reformed to include the true intention of the parties, alleged to be, that if the property was not used for school purposes, title reverted back to the private owner.

In its decision, the court repeatedly stated that the land was not acquired through condemnation proceedings, that is, through eminent domain (*id.* at 1039), and distinguished the matter from others whereby school sites were obtained through condemnation judgments.¹ *Id.* Since the court determined that the warranty deed was not acquired through condemnation proceedings but, rather, through negotiation and agreement, its decision in favor of the school district was based upon the law regarding a school's right to hold and divest itself of property ownership rather than with any consideration of the terms of the parties' purported agreement that would otherwise affect the plain legal import of the warranty deed that was conveyed.

Nor has the applicant provided any legal support for its position that it acquired title through condemnation proceedings. The cases it cites² for the proposition that a court can rely on stipulations and agreements are cases wherein the parties' stipulations and agreements were made a part of condemnation judgment orders. Memorandum of Law, pp. 2-3 (citing Parker v. Bd. Of Trustees of Southern Illinois University, 74 Ill.

¹ Although the official report of the case does not specifically state the manner in which the original condemnation lawsuit ended, it must be concluded that the case was dismissed without entry of a condemnation order incorporating the agreement of the parties pursuant to which the warranty deed was conveyed. This is based upon this court's decision distinguishing the case from others wherein orders of condemnation were entered and the rights of the parties were subsequently determined by those orders.

² The applicant filed a Memorandum of Law (hereinafter "Memorandum of Law") at the close of the hearing, and also made oral argument at that time. The Department declined to file any written post-hearing memorandum of law, opting to only make oral argument at the close of the hearing.

App. 2d 467 and City of Crystal Lake v. LaSalle National Bank, 121 Ill. App. 3d 346 (2nd Dist. 1984)).

Actually, the City of Crystal Lake case is of particular interest to the issue I address in this matter. The case involved the right to title to property sought by two competing municipalities through separate condemnation proceedings. The Village of Lake in the Hills (hereinafter “LITH”) filed a petition to condemn certain property in January, 1981. The City of Crystal Lake (hereinafter “Crystal Lake”) filed its condemnation petition against the same property in March, 1981. In February, 1982, LITH and the private owners entered into an agreement to settle the condemnation suit and entered into a stipulation to settle the matter according to the terms of their agreement. The agreement provided, *inter alia*, that the private owners would execute a trustee’s deed to LITH, but, legal title would revert to the owners if LITH defaulted on any of the agreement terms. Id. at 351. The agreement specifically provided that the parties “shall petition the court in that case to enter a final decree by consent, settling and disposing of the case in accordance with the agreement.” Id. at 352. The agreement was incorporated into the condemnation judgment. Id. at 352 (“the parties shall petition the court in that case to enter a final decree by consent, settling and disposing of the case in accordance with the agreement”); p. 353 (“The trial court’s final order approving and incorporating the consent decree... .”) (“interests acquired by LITH under the settlement and judgment”); p. 354 (“final judgment establishes the full rights of the parties, not the preliminary deed given under the stipulation and agreement”).

In deciding that the condemnation proceedings filed by LITH had priority over the condemnation suit filed by Crystal Lake, the court recognized that in the case of

Mattion v. Trustees of Schools of Township 41, North Range 12, supra, the condemnation proceeding never went to final judgment, and, therefore, the school did not take title in that case by condemnation. City of Crystal Lake v. LaSalle National Bank, supra at 354. Following its analysis on this point, the City of Crystal Lake court affirmatively stated that “the Illinois authorities have recognized that a settlement may be reached in condemnation, which, when incorporated in a decree of condemnation, will have the authority not merely of a private contract but of a court judgment.” (emphasis added) Id. at 356; see also Lake County Forest Preserve District v. First National Bank of Waukegan, 213 Ill. App. 3d 309, 318 (2nd Dist. 1991) (affirmatively citing City of Crystal Lake v. LaSalle National Bank, supra, for the proposition that “a settlement may be reached in a condemnation action, which will have the authority of not merely a private contract but of a court judgment, when incorporated into a decree of condemnation.” (emphasis added)).

This legal point is precisely why the applicant’s exemption request fails. The final court order of concern here is based upon a Stipulation To Dismiss that provides, only, that the Plaintiff, PFD, and specific defendants in the matter stipulated and agreed “that the said cause of action be dismissed with prejudice and without costs.” Applicant Ex. 10. Pursuant to that stipulation, the court entered an Order To Dismiss By Stipulation wherein the matter was dismissed with prejudice and without costs. While the court does acknowledge that the “cause of action and all issues ancillary thereto have been fully compromised and settled” (id.) no agreements are either incorporated into the order or otherwise articulated. In the absence of any order of the court specifying, in any way, the parties’ respective rights and duties in the condemnation proceeding, it must be

concluded that the title passed to the applicant not through condemnation, but, instead, through contract.

It is basic to Illinois law that “property tax exemption statutes ‘are to be strictly construed and are not to be extended by judicial interpretation beyond the authority given in the constitution.’” Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 288 (2004); Rotary International v. Paschen, 14 Ill. 2d 480 (1958). It is also well settled in Illinois that “the burden of proving the right to exemption is upon the party seeking it... .” Eden Retirement Center, Inc. v. Department of Revenue, supra at 289. As discussed previously, the Eminent Domain statutory provisions are also to be strictly construed and followed. Chicago & N.W. RY. Co. v. Chicago Mechanics’ Institute, supra.

In this instance, applicant did not follow the statutory provision providing for the entry of a condemnation judgment order setting forth the conditions of condemnation, which, as discussed herein, can be based on agreements of the parties through incorporation into the condemnation judgment. I find no support for the applicant’s argument that the legal procedure necessary to have had the parties’ agreement made part of the final order would have taken more time than the presentation of a written Stipulation to Dismiss (Applicant Ex. No. 10) and a pre-prepared Order To Dismiss By Stipulation (Applicant Ex. 12), neither of which had the actual contract and agreement attached to it. This is especially true since the Stipulation to Dismiss and the Order To Dismiss were presented to the court well after the trustee’s deed was conveyed to the applicant. See City of Crystal Lake v. LaSalle National Bank, supra at 355 (“[w]e also find no provision in the statute which either prohibits the procedure or states that the

court has no authority to exercise its jurisdiction by entering a final judgment based on an agreement of the parties when a previous deed of any nature has been exchanged”). I must conclude that the applicant herein took title to the property by trustee’s deed, and not by condemnation judgment order. Because of this determination, this applicant acquired ownership of the property on January 6, 2006 and not on April 27, 2005, the date of the filing of the condemnation lawsuit.

Wherefore, for the reasons stated above, I recommend that the Department’s denial of the applicant’s property tax exemption for the tax year 2005 be finalized.

4/19/07

Mimi Brin
Administrative Law Judge